

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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4 CSX TRANSPORTATION, INC.,)
5 Plaintiff,)
6 vs.)
7 PORT ERIE PLASTICS, INC.,) Civil Action
8 Defendant.) Case No.
) 05-139 Erie
9 - - -

10 Deposition of JAMES WITKOWSKI
11 Corporate Designee of Port Erie Plastics, Inc.

12 Thursday, February 2, 2006

13 - - -

14 The deposition of JAMES WITKOWSKI, called as a
15 witness by the Plaintiff, pursuant to notice and the
16 Federal Rules of Civil Procedure pertaining to the
17 taking of depositions, taken before me, the
18 undersigned, Teresa Constantini Berardi, a Notary
19 Public in and for the Commonwealth of Pennsylvania, at
20 the law offices of MacDonald Illig Jones & Britton,
21 LLP, 100 State Street, Suite 700, Erie, Pennsylvania
22 16507-1498, commencing at 8:57 a.m. the day and date
23 above set forth.

24 - - -

25 COMPUTER-AIDED TRANSCRIPTION BY
26 MORSE, GANTVERG & HODGE, INC.
27 ERIE, PENNSYLVANIA
28 814-833-1799
29 - - -
30 - - -

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Janssen & Keenan, PC:
4 Charles L. Howard, Esquire
One Commerce Square
Suite 2050
5 2005 Market Street
Philadelphia, Pennsylvania 19103

6

7 On behalf of the Defendant:

8 MacDonald Illig Jones & Britton, LLP:
9 Richard J. Parks, Esquire
Scott Stroupe, Esquire
10 100 State Street, Suite 700
Erie, Pennsylvania 16507-1498

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12 ALSO PRESENT:

13 John Underwood
John T. Johnson

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I-N-D-E-X

2 EXAMINATION BY:

3 Mr. Howard

PAGE:

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5 WITKOWSKI DEPOSITION EXHIBIT NOS.:PAGE:

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6 1 - First Amended Notice of Deposition of
7 Corporate Designee Pursuant to Rule 30(b) (6)

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7 2 - Purchase orders

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8 3 - Letter dated 7-13-00 to Nexpak from
Mr. Witkowski

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10 4 - Series of email correspondence dated 4-5-02

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11 5 - Straight bill of lading dated 6-4-04

43

12 6 - Ten bills of lading

46

13 7 - Memo dated 11-19-04 to Mr. Witkowski from
Mr. Bartosik

47

14 8 - Constructive placement notice

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15 9 - Document entitled "Port Erie Plastics NA
124277 Incidentals as of 04-15-05.xls"

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1 confirm that you've never seen them before.

2 How long has Port Erie been in business?

3 A 53 years.

4 Q And what is the business of Port Erie
5 Plastics?

6 A It's a custom injection molder.

7 Q Does Port Erie produce a product?

8 A We produce various products for various
9 customers.

10 We're into home medical stuff.

11 We're into, at one time, toys.

12 We're into plumbing products.

13 Pretty much we will make whatever our
14 customer want us to if we have the capabilities.

15 Q And I would say the thing that's common to
16 all these products is that they're made out of some
17 type of plastic?

18 A Plastic, correct.

19 Q What did you do, if anything, to prepare
20 for this deposition?

21 A Basically a mental note of what I remember
22 happening in the past, just trying to think if I could
23 remember the entire scenario, how we used to deal
24 business with Nexpak.

25 Q Did you review any documents?

1 A My affidavit that I have there
2 (indicating), and I looked through a couple notes and
3 stuff I had made in this entire process, but I really
4 didn't go through anything.

5 Q Did you speak with anyone other than your
6 counsel in getting ready for this deposition?

7 A No.

8 Q You made reference to an affidavit.

9 Do you have that with you?

10 MR. PARKS: It's not filed yet of record.

11 We're not going to allow that to be produced.

12 MR. HOWARD: Okay.

13 MR. PARKS: He does have an affidavit that
14 has been prepared. It's not filed of record or
15 anything else.

16 MR. HOWARD: I couldn't remember whether
17 you had attached one.

18 MR. PARKS: No.

19 MR. HOWARD: So I didn't know if it was
20 something I had seen before or not.

21 MR. PARKS: No, it's not a pleading of
22 record yet.

23 BY MR. HOWARD:

24 Q You've made references to Nexpak.

25 What was the business relationship between

1 Nexpak and Port Erie?

2 A We molded DVD cases for them.

3 Q And when did Port Erie acquire that
4 particular customer or that contract or whatever
5 governed that business relationship?

6 A 2000-2001, somewhere in that time frame.

7 Q And I understand that there's no longer a
8 business relationship between Port Erie and Nexpak?

9 A No.

10 Q In fact, it's my understanding that Nexpak
11 is in bankruptcy?

12 A They were. I believe they've come out
13 already.

14 MR. PARKS: Their plan of reorganization
15 was confirmed by the court, Northern District of
16 Ohio, Canton.

17 BY MR. HOWARD:

18 Q Port Erie is not doing any business today
19 with Nexpak?

20 A No.

21 Q When did that business relationship end?

22 A Late 2004. I believe it was 2004.

23 Q Explain for me how the Plastek -- give me
24 some more detail on how the Nexpak and the Plastek
25 relationship worked in terms of getting the --

1 MR. PARKS: Plastek?

2 MR. HOWARD: I'm sorry.

3 BY MR. HOWARD:

4 Q The Nexpak and Port Erie Plastics
5 relationship worked.

6 A We were a molder for Nexpak, we produced
7 the cases, and then shipped them to their customers.

8 Q Who supplied the raw material for the
9 cases?

10 A Nexpak purchased it and would supply it to
11 us.

12 Q What did you charge Nexpak for your
13 services?

14 A We charged them for molding, which was a
15 number that based on our internal costs, and then we
16 were -- had to include in our costs a number of what
17 Nexpak wanted us to charge them back for resin.

18 Q I'm not quite sure I understand your
19 answer.

20 A Our costs of a DVD case included our
21 molding, and then Nexpak told us that we had to
22 include a cost for the resin in there even though we
23 never purchased it.

24 Q So Nexpak was the supplier of the resin to
25 Port Erie?

1 A Correct.

2 Q Do you know where Nexpak got the resin?

3 A BP..

4 I'm assuming it was down in Texas, but I'm
5 not sure.

6 Q Who arranged for the transportation of the
7 resin from BP to Erie, Pennsylvania?

8 A I'm assuming it was either BP or Nexpak.

9 Q Did --

10 MR. PARKS: One second.

11 Don't assume. If you don't know, you don't
12 know.

13 A It was not Port Erie, is what I can tell
14 you for sure.

15 Q Did Port Erie have any contact with BP
16 concerning the resin product?

17 A We had contact with the sales rep only
18 because he would check on his product.

19 Q And when the sales rep -- were these
20 contacts initiated by a BP sales rep?

21 A Yes.

22 Q And what was he checking on?

23 A Just to see how the material was running,
24 if we had any concerns.

25 Q Did Port Erie have any contact with BP

1 Q What was your understanding of what Nexpak
2 did with the information that you sent to it
3 concerning the number of machines you were running?

4 A They would verify that their orders were
5 being met, and if they needed to increase or decrease
6 machines to meet their customers requirements.

7 And from there, they would probably
8 determine if they had enough material in the system
9 for us to produce.

10 Q Would Nexpak determine how many machines
11 Port Erie would be running at any given time?

12 A For their product, yes.

13 Q Are you familiar with an entity known as
14 Plastek?

15 A Yeah.

16 Q What is your understanding of Plastek's
17 business?

18 A They are a molder of plastic products.

19 Q Do you know if they do anything else other
20 than mold?

21 A No, they --

22 Q Do you have an understanding of the
23 different carriers, rail carriers, that moved the
24 freight from the BP facility to Erie, Pennsylvania?

25 Do you know what carriers they were --

1 A No.

2 Q -- other than CSX?

3 A No.

4 Q Is it your understanding that CSX carried
5 the freight from BP all the way to Erie?

6 A Yes.

7 Q So you're not aware of any other carrier
8 involvement?

9 A No.

10 Q When the resin arrived at the Port Erie
11 facility, was it accompanied by a bill of lading?

12 MR. PARKS: Well, Port Erie does not have a
13 rail facility.

14 MR. HOWARD: Okay.

15 MR. PARKS: Are you talking about
16 Presque Isle Trucking?

17 MR. HOWARD: Hold on a minute.

18 Just strike the last question.

19 MR. PARKS: I have a horrible time keeping
20 those straight, too.

21 MR. HOWARD: I couldn't remember exactly,
22 so I'll just strike the question, I'll ask
23 again.

24 BY MR. HOWARD:

25 Q When the resin arrived at the Port Erie

1 facility, was it accompanied by a bill of lading?

2 A No.

3 Q And when it arrived at the Port Erie
4 facility, who brought it to the Port Erie facility?

5 A Presque Isle Trucking.

6 Q Did Port Erie have a relationship with
7 Presque Isle Trucking?

8 A We used them to bring the product to our
9 facility, yes.

10 Q And where was Presque Isle bringing the
11 product from?

12 A Wherever the railcars were put. I don't
13 know.

14 Q You understand that at some point this
15 product was shipped by rail; correct?

16 A Correct.

17 Q But it arrived at your facility by truck.
18 Do you know where it was transferred from
19 the railcar to the truck?

20 A One place used to be Mount Fort Terminal,
21 but I am not sure if all the material came through
22 there.

23 Q Do you know where that transfer would have
24 been made during the 2002-2003 time period?

25 A No.

1 Q Did Port Erie have anything to do with the
2 scheduling of the shipments from BP to Pennsylvania?

3 A No.

4 Q Was Port Erie ever notified when those
5 shipments left the BP facility?

6 A No.

7 Q When did Port Erie receive notification
8 that shipments had arrived in Erie?

9 A We would receive a weekly inventory from
10 Presque Isle Trucking, and on there it would list what
11 cars he had.

12 Q And what was the purpose of having that
13 weekly inventory sent to Port Erie -- strike that
14 question.

15 What use did Port Erie make of that
16 inventory?

17 A It was used for Port Erie and Nexpak, just
18 to see what inventory was available for production.

19 Q Do you know whether that weekly inventory
20 was also supplied to Nexpak?

21 A Yes, it was.

22 Q How did Presque Isle know when Port Erie
23 needed a shipment of resin?

24 A Presque Isle was in contact with our
25 inventory department, and if we felt we needed more

1 resin, they would literally, you know, contact us in
2 the morning and we would let them know whether we
3 needed resin brought over.

4 Q Who would contact who?

5 A Presque Isle Trucking would contact our
6 inventory -- would contact Port Erie's inventory
7 department.

8 Q What would Presque Isle ask your inventory
9 department?

10 A "Do you need a truckload of resin today?"

11 Q During the 2002-2003 time period, what
12 Port Erie employees were in your inventory department?

13 A The ones -- that would have been
14 David Nickle and Mel Fields, but I don't remember the
15 other people.

16 Q Are they still employed by Port Erie?

17 A Yes.

18 Q In what capacity?

19 A Inventory.

20 Q Was this communication between Presque Isle
21 and Port Erie always initiated by Presque Isle, or did
22 your inventory department ever call Presque Isle and
23 say, "We need more resin?"

24 A I don't know.

25 Q Who would know?

1 Q Other than Nexpak.

2 A Nexpak was my customer. They wanted to
3 control the resin that way.

4 Q Did this particular agreement that's
5 memorialized here on Exhibit 3, did this govern all
6 shipments of resin to Port Erie Plastics?

7 A For Nexpak.

8 Q For Nexpak.

9 That's a "yes"?

10 A Yes.

11 Q Okay.

12 The second sentence is, "We will be
13 operating with the understanding that ownership of the
14 resin will not transfer until the material is
15 delivered to our facility in Harborcreek, PA."

16 This transfer of ownership, did that occur
17 when it was put into the -- I understand that this
18 stuff was stored in silos at Port Erie?

19 A Correct.

20 Q Is your understanding that Port Erie now
21 owned the resin?

22 A After it was delivered by Presque Isle
23 Trucking, yes.

24 Q So once it goes into the silo, then
25 Port Erie owns it?